

HALOCHOSCOPE

This week's question:

Someone keeps a number of love-birds in cages inside the house. Every day they are released, one or more at a time, to fly about freely. They are never released all at the same time because some of them fight. Sometimes they fly back into their cages by themselves, at other times they need to be chased. May they be released and returned to their cages on *Shabbos*? May one shut the cages once they fly back by themselves?

The issues:

A) *Tzad*, trapping on *Shabbos*

B) *Muktzeh* as it relates to this case

C) *Tzaar Baalei Chaim*, preventing cruelty to animals

A) *Tzad*

Trapping living creatures is Scripturally forbidden on *Shabbos*. To qualify as a violation of the Scriptural *melacha* two main considerations must be satisfied. The creature concerned must be *yesh bemino nitzod*, a species that is usually trapped for its uses, such as its meat, hide or other products, or to be held in captivity. This would include honeybees, but exclude hornets. Some insects are used for medicinal purposes. The act must also qualify as *Tzad*. The creature must be brought into a state of *aino mechusar tzeidah*, such that it will not be able to escape. It is now under the total control of the human. Restricting it to a space big enough for it to dodge the trapper's hands would not be considered *tzad*. If it is already so restricted, restricting more movement is not *tzad*.

Tzad includes picking a creature up with one's hands, using a net, catching it by part of its body, or chasing it into a space where its movement is sufficiently restricted. Shutting the door of a cage is included. Closing a container with an insect inside is debated. If the insect could escape as soon as the cover is removed, some poskim permit closing it.

Domestic animals on one's property, such as farm animals or pets, are *nitzudim veomdim*, already trapped. Scripturally, one may further restrict their movements. House cats, however, are wild enough to escape in a relatively restricted space. Accordingly, it is Scripturally forbidden to pick up a cat on *Shabbos*, or to shut it into a small space.

Rabbinically, even trapping creatures that are *ain bemino nitzud*, not usually trapped for their use, is forbidden. This includes hornets, mosquitoes and houseflies. Animals that are *nitzudim veomdim* could be forbidden to trap Rabbinically, according to some, if they were originally wild, such as deer or birds now in captivity. Controllable farm animals are never forbidden to trap, even Rabbinically. This means that it is permitted to coax them into a confined place, even if some 'trapping' is needed. This is not considered *tzad*. If a domestic animal 'rebels' by running away and refusing to stay within its usual confines, there is a real issue of *tzad*. Domesticated wild animals or birds already confined on one's property, are the subject of debate. In one view, they may be trapped, cornered

and locked up. However, if they are in a rebellious mood, the rule changes. In a small confined courtyard, where no net or trap would be needed (they could be caught in one swoop), there is no restriction even Rabbinically. For birds, this must be a roofed area. In a large yard, though they are tame and do not usually require a net, catching them gives the appearance of *tzad*, and is Rabbinically forbidden. This refers to a tame animal in a rebellious mood, rather than an animal that rebelled totally, that was discussed earlier.

The second view maintains that it is forbidden to trap tamed wild animals or birds even in one's possession. Some say that this applies even in a small space, but most consider this out of the realm of *tzad*. In a large yard or house, it is forbidden Rabbinically even if they are not behaving rebelliously. Many poskim include farmed fowl in this stringent view. Thus, geese or chickens would be forbidden to trap in a large yard. Some cite a few exceptions to this. If they escape outside, an adult may not trap them, but he need not stop a child from doing so. One may ask a gentile to trap them, or to feed them and close the door. One may block escape so that they return to the house, if the house is large enough that more than one swoop is needed to further trap it there. If the chicken is so tame that once it is held it stops all activity, there would never be an issue of *tzad*. One could chase it into its coop. Since there is an opinion that excludes domestic fowl from this stringent ruling, one may rely on these dispensations. None of this is allowed for a wild bird that was tamed. The prevailing practice is to follow the second view.

From the various opinions, birds may be divided into four basic categories: Farmed birds, such as geese or chickens are totally dependent on care of a human; Doves of a dovecote, or that roost in a loft, are domestic, but forage for food and fly about freely. Yet they tend to stay where they have been trained to stay; Wild birds that have been tamed or domesticated, including trained birds go through a process in which they move from requiring a trap or net, to where they voluntarily go back 'home'; Wild birds that have no prior contact with humans may not be trapped at all. The birds in our question would seem to fall into one of the middle two categories.

The Talmud discusses two types of bird. One type is inactive indoors. Once brought indoors *tzad* has been done. The other flies around indoors as it does outdoors. It is not considered trapped until restricted to a small area where its freedom is fully restricted. This relates to chasing it into a house, or shutting the door. In our case, the birds are caged. This indicates that they need to be restricted because they could fly away. However, it is likely that these particular birds do not fly away. They might cause damage or harm each other if allowed to fly around freely. What is their natural state? Are they naturally domestic, not requiring trapping, or are they naturally wild? Is it possible that they are naturally kept as pets of some kind, purely for entertainment? If so, they are not wild, yet it is normal to restrain them in a cage most of the time. They could be considered domestic. The indication for this is that they are released to fly around, and that they often fly back to their cages voluntarily. On the other hand, they might have become used to considering the cage their 'den'. Even a wild animal has a home territory of its own.

The answers to these questions will determine whether to consider them domestic birds that are in a rebellious mood when not going back voluntarily, or wild birds that have been tamed somewhat. The ruling on chasing or coaxing them back into their cages and on shutting them in (whether they flew back voluntarily or not) depends on this. If

they have not yet been trained to stay in their cages when the door is opened for cleaning or feeding, it is forbidden to shut the door.

Melachos are done for specific purposes. One might perform the act of a *melacha* for a different purpose. For example, the prohibition against digging a hole is part of *choresh*, plowing, or of *boneh* building. In both cases, the object is the hole. If one dug the same hole because he needed the dirt, it is called *melacha she'aina tzricha legufah*, done for a reason other than the usual purpose. This is debated by the Talmud. The prevailing custom of *Ashkenazic* communities is to follow the lenient view, forbidding it only Rabbinically. The rabbis relaxed this to protect one from pain or major loss or damage. If one had to trap an animal to prevent it from harming someone, this would be the wrong purpose for the trapping. If, in our case, the object of caging the birds is not to keep them from getting away, but to keep them from damaging the house or each other, the same rule would apply. However, the question still remains, should they be released on *Shabbos* if recapturing them involves a *melacha she'aina tzricha legufah*? This will depend on whether it is possible to give them their exercise before and after *Shabbos* to avoid the issues. [See *Shabbos* 75a-b, 106a-107b, 121b, 128b, Poskim. Tur, Sh. Ar. OC 316:1 3 8 12, commentaries. Halachoscope III:5 IV:40 X46.]

B) Muktzeh of Baalei Chaim

Picking up a creature can also involve moving *muktzeh*. The Rabbinical laws of *muktzeh* are based on the Scriptural idea of *muchan*. Something that was not 'prepared' for *Shabbos* use is put out of mind, consciously, subconsciously, or at least, according to one view, actively. *Muktzeh* is categorized according to the level of usefulness the item has, with varying degrees of restriction. *Muktzeh machmas gufo*, is a commodity or raw material that has no permissible use on *Shabbos*. *Baalei chaim*, living creatures, are included in this. Domestic animals may not be milked, slaughtered or put to work. Wild animals may not be trapped. Petting them without carrying is permitted, provided they are not shedding hairs. Even moving them by their feet is permitted. In a minority view, pets were never included in *muktzeh of baalei chaim*. Their 'use' is permitted on *Shabbos*.

Accordingly, if chasing the birds back into the cage would be permitted, the issue of *muktzeh* must be avoided. This could even affect how one coaxes the birds back into their cage. For example, if they do not fly so much but hop, may one place an object for them to hop on? That would deem the object *muktzeh* while the birds are on it. May one make an object *muktzeh* on *Shabbos*? The Talmud debates this, on the basis that it resembles demolishing, by making an item useless. The cage itself could not be moved either. If the bird is considered *muktzeh*, and the cage housed it at the beginning of *Shabbos*, it became a *basis ledavar ha'asur*, something holding a *muktzeh* item. This remains *muktzeh* for the duration of *Shabbos*. This raises the issue of how to open the cage without moving it. If it is on a firm stand, one could open the door without moving the entire cage. If it hangs on a string, many poskim would consider moving it *tiltul muktzeh*. There are ways to reduce the act of *tiltul muktzeh*. These include using a different part of the body or moving it indirectly. This would then be the ideal way to open the cage. Assuming these birds do not raise the issue of *tzad*, one could presumably find a way to move them back into their cages in the same way. However, one may not bait them to land on an item and then move it. They would have to land there voluntarily. [See *Shabbos* 42b-47b 122b-126b

128a 141a 142b-143a, Poskim. Tur Sh Ar OC 303:27 308:3 32 39-43:(Kaf Hachaim 235) 311:8 316:12 326:9-10, commentaries.]

C) Tzaar Baalei Chaim

In considering whether to wait until after *Shabbos* to release the birds, one must take into account the pain the animals might bear if they are restricted for so long. The prohibition against cruelty to animals, or obligation to show concern for their pain, is either Scriptural or Rabbinical, as debated by the Talmud. The consensus is that *tzaar baalei chaim* is forbidden Scripturally. This is based on the themes of various *mitzvos*, such as unloading an overburdened animal. *Mitzvos* refine one's character. The refinement of such *mitzvos* is to make one sensitive to animal's pain, emulating Hashem Himself.

The principle of *tzaar baalei chaim* is invoked on *Shabbos* to relax some Rabbinical decrees. A *melacha*, even Rabbinically forbidden, may not be violated in the care of animals. A decree instituted due to circumstances leading to *melacha* is relaxed for care and upkeep of animals, wild and tame. This includes *muktzeh*. Pillows may be placed to help an animal that has fallen into a hole and is in pain. It will cause the pillow to become useless. Some even permit moving the animal itself when there is no alternative. [See *Shabbos* 53b 128b, Baba Metzia 31a-33a 85a, Poskim. Chinuch 294 451 545. Tur Sh Ar OC 124:9 305:19 332:2-4, EH 5:14, commentaries. Halochoscope IV:40.]

In conclusion, if it is determined that the birds cannot stay in their cages until *Shabbos* is over, one could open the door in a permissible way. They should find their own way out. If they do not find their own way back, and outside their cages they fight and cause each other pain, one could use one of the suggestions to get them back into their cages. The prohibition of making a utensil useless does not apply when one could shoo the birds off it at will. If it is determined that *tzad* applies, pain does not permit this. *Tzad* will depend on where they fit in the categories discussed. Closing the cage door would involve *tzad* and *muktzeh*. If there is no issue of *tzad* and the only issue is *muktzeh*, and one is concerned that if the doors are left open the birds will come to fight, it seems that *tzaar baalei chaim* could be invoked to close it.

On the Parsha ... And Moshe would graze the sheep ... [3:1] Hashem tested Moshe with sheep. He was caring for Yisro's sheep, when a kid goat ran away. He chased after it until it stopped at a brook to drink. Moshe said "I didn't realize you were thirsty! He then lifted the kid on his shoulders. Hashem said "You have the mercy to lead the sheep of mere mortals, you will lead my sheep Yisroel!" [Shemos rabah 2:2] *Tzaar baalei chaim* is not a particular *mitzvah*. It is rather a basic object behind many *mitzvos*. It is used as the example to demonstrate how *mitzvos* are meant to refine the person. Most of all, this very principle is singled out as the way in which we can emulate Hashem. If Moshe would merit being the leader of Hashem's people, he would need to show that he could emulate Hashem's ways.

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Shmuel a'h, whose *yahrzeit* is on the 25th of Teves. ♂

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